

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 31 - SB 68

February 4, 2013

SUMMARY OF BILL: Redefines aggravated assault under Tenn. Code Ann. § 39-13-102 to include two new classifications of aggravated assault: intentionally or knowingly commits assault that results in death (Class C felony) and recklessly commits assault that results in death (Class D felony). Requires the new classifications to be sentenced within Range II unless the defendant qualifies for a higher range.

ESTIMATED FISCAL IMPACT:

On January 29, 2013, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures – \$269,200/ Incarceration**

Due to a change in the cost per day to house an inmate in a state correctional institution, this impact was in error. The estimated impact is:

(CORRECTED)

Increase State Expenditures – \$266,500/ Incarceration*

Assumptions:

- Currently, aggravated assault can be intentional or knowing, Tenn. Code Ann. § 39-13-102(a)(1)(A), or reckless, Tenn. Code Ann. § 39-13-102(a)(1)(B). Intentional or knowing aggravated assault is a Class C felony; reckless aggravated assault is a Class D felony. The bill would require both types of assault to be sentenced within Range II when the assault results in the death of another, unless a defendant qualifies for a higher range. The bill will not result in new admissions. Rather, it will result in certain aggravated assaults—those resulting in the death of another—receiving longer sentences.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years.

- According to the DOC, there has been an average of 965.7 admissions for intentional or knowing aggravated assault, a Class C felony, over the last 10 years. It is assumed that one percent of assaults result in death. This bill will result in 10 admissions per year ($965.7 \text{ admissions} \times 0.01 = 9.66 \text{ admissions}$) receiving larger sentences under Range II. Population growth will account for one additional admission ($10 \times .1178 = 1.18$) for a total of 11 offenders ($10 + 1 = 11$).
- The average time served for intentional or knowing aggravated assault is 5.06 years.
- A Class C felony sentenced within Range II can result in a sentence up to 10 years with release eligibility at 35 percent. Assuming a 10 year sentence for an intentional or knowing aggravated assault resulting in death, the average sentence under the bill will be 6.5 years [$10 \text{ years} - (10 \text{ years} \times .35) = 6.5 \text{ years}$].
- According to the DOC, 43.36 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.36 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($11 \text{ offenders} \times .4336 = 5 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on six offenders [$11 \text{ offenders} - 5 \text{ offenders (recidivism discount)} = 6 \text{ offenders}$] serving an additional 1.44 years (6.5 years, the average sentence for Range II intentional/knowing aggravated assault – 5.06 years, the average time served for intentional/knowing aggravated assault = 1.44 years). The cost for one offender at an additional 1.44 years (525.96 days) is \$33,751 ($\$64.17 \times 525.96 \text{ days}$). The cost for six offenders is \$202,506 ($\$33,751 \times 6 \text{ offenders}$).
- According to the DOC, there has been an average of 154.5 admissions for reckless aggravated assault, a Class D felony, over the last 10 years. It is assumed that one percent of assaults result in death. This bill will result in two admissions per year ($154.5 \text{ admissions} \times 0.01 = 1.55 \text{ admissions}$) receiving larger sentences under Range II. Population growth will not affect the number of admissions.
- The average time served for reckless aggravated assault is 2.47 years.
- A Class D felony sentenced within Range II can result in a sentence up to eight years with release eligibility at 35 percent. Assuming an eight year sentence for a reckless aggravated assault resulting in death, the average sentence under the bill will be 5.2 years [$8 \text{ years} - (8 \text{ years} \times .35) = 5.2 \text{ years}$].
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($2 \text{ offenders} \times .4911 = 1 \text{ offender}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [$2 \text{ offenders} - 1 \text{ offender (recidivism discount)} = 1 \text{ offender}$] serving an additional 2.73 years (5.2 years, the average sentence for Range II reckless aggravated assault – 2.47 years, the average time served for reckless aggravated assault = 2.73 years). The cost for one offender at an additional 2.73 years (997.13 days) is \$63,986 ($\$64.17 \times 997.13 \text{ days}$).

- The total additional incarceration cost is \$266,492 (\$202,506 + \$63,986).
- Given that the bill will not result in additional admissions but rather increased sentences for aggravated assaults already being prosecuted, any impact to the District Attorneys General Conference and the District Public Defenders Conference can be accommodated within existing resources.
- Any impact to the caseloads of state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/trm